

**§ 1.382-1 Table of contents.**

This section lists the captions that appear in the regulations for §§1.382-1T, 1.382-2, 1.382-2T, and 1.382-3 through 1.382-11.

*§ 1.382-1T* [Reserved]*§ 1.382-2 General rules for ownership change.*

(a) Certain definitions for purposes of sections 382 and 383 and the regulations thereunder.

- (1) Loss corporation.
  - (i) In general.
  - (ii) Distributor of transferor loss corporation in a transaction under section 381.
  - (iii) Separate accounting required for losses and credits of an acquiring corporation and a distributor or transferor loss corporation.
  - (iv) End of separate accounting for losses and credits of distributor or transferor corporation.
  - (v) Application to other successor corporations.
- (2) Pre-change loss.
- (3) Stock.
  - (i) In general.
  - (ii) Convertible stock.
- (4) Testing date.
  - (i) In general.
  - (ii) Exceptions.
- (5) Successor corporation.
- (6) Predecessor corporation.
- (b) Effective dates.
  - (1) In general. [Reserved]
  - (2) Rules provided in paragraph (a)(3)(ii) of this section.
    - (i) In general.
    - (ii) Certain convertible preferred stock.
  - (3) Rules provided in paragraph (a)(4) of this section.

*§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).*

- (a) *Ownership change.* (1) In general.
- (2) Events requiring a determination of whether an ownership change has occurred.
  - (i) Testing dates prior to November 5, 1992.
  - (ii) Information statement required.
  - (iii) Records to be maintained by loss corporation.
    - (A) Exception.
    - (B) Statement with respect to prior periods.
  - (b) *Nomenclature and assumptions.*
  - (c) *Computing the amount of increases in percentage ownership.* (1) In general.
  - (2) Example.
  - (3) Related and unrelated increases in percentage stock ownership.
  - (4) Example.
  - (d) *Testing period.* (1) In general.
  - (2) Effect of a prior ownership change.

- (3) Commencement of the testing period.
  - (i) In general.
  - (ii) Exception for corporations with net unrealized built-in loss.
- (4) Disregarding testing dates.
- (5) Example.
- (e) *Owner shift and equity structure shift.*
  - (1) Owner shift.
  - (i) Defined.
  - (ii) Transactions between persons who are not 5-percent shareholders disregarded.
  - (iii) Examples.
  - (2) Equity structure shift.
    - (i) Tax-free reorganizations.
    - (ii) Transactions designated under section 382(g)(3)(B) treated as equity structure shifts.
    - (iii) Overlap of owner shift and equity structure shift.
    - (iv) Examples.
  - (f) *Definitions.* (1) Loss corporation.
  - (2) Old loss corporation.
  - (3) New loss corporation.
  - (4) Successor corporation.
  - (5) Predecessor corporation.
  - (6) Shift.
  - (7) Entity.
  - (8) Director ownership interest.
  - (9) First tier entity.
  - (10) 5-percent owner.
  - (11) Public shareholder.
  - (12) Public owner.
  - (13) Public group.
  - (14) Higher tier entity.
  - (15) Indirect ownership interest.
  - (16) Highest tier entity.
  - (17) Next lower tier entity.
  - (18) Stock.
    - (i) In general.
    - (ii) Treating stock as not stock.
    - (iii) Treating interests not constituting stock as stock.
    - (iv) Stock of the loss corporation.
  - (19) Change date.
  - (20) Year.
  - (21) Old section 382.
  - (22) Pre-change loss.
  - (23) Unrelated.
  - (24) Percentage ownership interest.
  - (g) *5-percent shareholder.* (1) In general.
  - (2) Determination of whether a person is a 5-percent shareholder.
  - (3) Determination of the percentage stock ownership interest of a 5-percent shareholder.
  - (4) Examples.
  - (5) Stock ownership presumptions in connection with certain acquisitions and dispositions of loss corporation stock.
    - (i) In general.
    - (ii) Example.
  - (h) *Constructive ownership of stock.* (1) In general.
  - (2) Attribution from corporations, partnerships, estates and trusts.
    - (i) In general.

- (ii) Limitation on attribution from entities with respect to certain interests.
- (iii) Limitation on attribution from certain entities.
- (iv) Examples.
- (3) Attribution to corporations, partnerships, estates and trusts.
- (4) Option attribution.
  - (i) In general.
  - (ii) Examples.
  - (iii) Contingencies.
  - (iv) Series of options.
  - (v) Interests that are similar to options.
  - (vi) Actual exercise of options.
    - (A) In general.
    - (B) Actual exercise within 120 days of deemed exercise.
    - (vii) Effect of deemed exercise of options on the outstanding stock of the loss corporation.
      - (A) Right of obligation to issue stock.
      - (B) Right or obligation to acquire outstanding stock by the loss corporation.
      - (C) Effect on value of old loss corporation.
      - (viii) Options that lapse or are forfeited.
      - (ix) Option rule inapplicable if pre-change losses are de minimis.
      - (x) Options not subject to attribution
        - (A) Long-held options with respect to actively traded stock.
        - (B) Right to receive or obligation to issue a fixed dollar amount of value of stock upon maturity of certain debt.
        - (C) Right or obligation to redeem stock of the loss corporation.
        - (D) Options exercisable only upon death, disability or mental incompetency.
        - (E) Right to receive or obligation to issue stock as interest or dividends.
        - (F) Options outstanding following an ownership change.
          - (1) In general.
          - (2) Example.
        - (G) Right to acquire loss corporation stock pursuant to a default under loan agreement.
        - (H) Agreement to acquire or sell stock owned by certain shareholders upon retirement.
          - (I) [Reserved]
          - (J) Title 11 of similar case.
          - (K) through (Y) [Reserved]
        - (xi) Certain transfers of options disregarded.
        - (xii) Exercise of an option that has not been treated as stock.
        - (xiii) Effective date.
      - (5) Stock transferred under certain agreements.
        - (i) [Reserved]
        - (j) *Aggregation and segregation rules.* (1) Aggregation of public shareholders and public owners into public groups.
          - (i) Public group.
          - (ii) Treatment of public group that is a 5-percent shareholder.
          - (iii) Presumption of no cross-ownership.

- (iv) Identification of the public groups treated as 5-percent shareholders.
  - (A) Analysis of highest tier entities.
  - (B) Analysis of other higher tier entities and first tier entities.
  - (C) Aggregation of the public shareholders.
  - (v) Appropriate adjustments.
  - (vi) Examples.
  - (2) Segregation rules applicable to transactions involving the loss corporation.
    - (i) In general.
    - (ii) Direct public group.
    - (iii) Transactions to which segregation rules apply.
      - (A) In general.
      - (B) Certain equity structure shifts and transactions to which section 1032 applies.
        - (1) In general.
        - (2) Examples.
      - (C) Redemption-type transactions.
        - (1) In general.
        - (2) Examples.
      - (D) Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock.
        - (1) In general.
        - (2) Example.
      - (E) Transactions identified in the Internal Revenue Bulletin.
      - (F) Issuance of rights to acquire loss corporation stock.
        - (1) In general.
        - (2) Example.
    - (iv) Combination of de minimis public groups.
      - (A) In general.
      - (B) Example.
    - (v) Multiple transactions.
      - (A) In general.
      - (B) Example.
    - (vi) Acquisitions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.
  - (3) Segregation rules applicable to transactions involving first tier entities or higher tier entities.
    - (i) Dispositions.
    - (ii) Example.
    - (iii) Other transactions affecting direct public groups of a first tier entity or higher tier entity.
    - (iv) Examples.
    - (v) Acquisitions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.
    - (k) *Operating rules.* (1) Presumptions regarding stock ownership.
      - (i) Stock subject to regulation by the Securities and Exchange Commission.
      - (ii) Statements under penalties of perjury.
      - (2) Actual knowledge regarding stock ownership.
      - (3) Duty to inquire as to actual stock ownership in the loss corporation.
      - (4) Ownership interests structured to avoid the section 382 limitation.

## Internal Revenue Service, Treasury

## § 1.382-1

- (5) Example.
- (6) First tier entity or higher tier entity that is a foreign corporation or entity. [Reserved.]
  - (1) *Changes in percentage ownership which are attributable to fluctuations in value.* [Reserved]
  - (m) *Effective date.* (1) In general.
  - (2) Plan of reorganization.
  - (3) Earliest commencement of the testing period.
  - (4) Transitional rules.
  - (i) Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.
  - (ii) Example.
  - (iii) Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.
  - (iv) Rules provided in paragraphs (f)(18)(ii) and (iii) of this section.
  - (v) Rules provided in paragraph (a)(2)(ii) of this section.
  - (vi) Rules provided in paragraph (h)(4) of this section.
  - (vii) Rules provided in paragraph (a)(2)(i) of this section.
- (5) Bankruptcy proceedings.
  - (i) In general.
  - (ii) Example.
- (6) Transactions of domestic building and loan associations.
- (7) Transactions not subject to section 382.
  - (i) Application of old section 382.
  - (ii) Effect on testing period.
  - (iii) Termination of old section 382. [Reserved]
- (8) Options issued or transferred before January 1, 1987.
  - (i) Options issued before May 6, 1986.
  - (ii) Options issued on or after May 6, 1986 and before September 18, 1986.
  - (iii) Options issued on or after September 18, 1986 and before January 1, 1987.
- (9) Examples.

### § 1.382-3 Definitions and rules relating to a 5-percent shareholder.

- (a) Definitions.
  - (1) Entity.
  - (i) In general.
- (ii) Examples.
- (iii) Effective date.
  - (A) In general
  - (B) Special rule.
  - (C) Example.
- (2) [Reserved]
- (b) through (i) [Reserved]
- (j) Modification of the segregation rules of § 1.382-2T(j)(2)(iii) in the case of certain issuances of stock.
  - (1) Introduction.
  - (2) Small issuance exception.
    - (i) In general.
    - (ii) Small issuance defined.
    - (iii) Small issuance limitation.
  - (A) In general.

- (B) Class of stock defined.
- (C) Adjustments for stock splits and similar transactions.
- (D) Exception.
  - (iv) Short taxable years.
- (3) Other issuances of stock for cash.
  - (i) In general.
  - (ii) Solely for cash.
- (A) In general.
- (B) Related issuances.
- (iii) Coordination with paragraph (j)(2) of this section.
- (4) Limitation on exempted stock.
- (5) Proportionate acquisition of exempted stock.
  - (i) In general.
  - (ii) Actual knowledge of greater overlapping ownership.
- (6) Exception for equity structure shifts.
- (7) Transitory ownership by underwriter disregarded.
- (8) Certain related issuances.
- (9) Application to options.
- (10) Issuance of stock pursuant to the exercise of certain options.
- (11) Application to first tier and higher tier entities.
- (12) Certain non-stock ownership interests.
- (13) Examples.
- (14) Effective date.
  - (i) In general.
  - (ii) Effective date for paragraph (j)(10) of this section.
- (iii) Election to apply this paragraph (j) retroactively.
  - (A) Election.
  - (B) Amended returns.
  - (C) Revised information statements.
- (k) Special rules for certain regulated investment companies.
  - (1) In general.
  - (2) Effective date.
    - (i) General rule.
    - (ii) Election to apply prospectively.

### § 1.382-4 Constructive ownership of stock.

- (a) In general. [Reserved]
- (b) Attribution from corporations, partnerships, estates and trusts.
  - (1) [Reserved]
  - (2) Limitation.
- (c) Attribution to corporations, partnerships, estates and trusts. [Reserved]
- (d) Treatment of options as exercised.
  - (1) General rule.
  - (2) Options treated as exercised.
- (i) Issuance or transfer.
- (ii) Subsequent testing dates.
- (3) The ownership test.
- (4) The control test.
  - (i) In general.
  - (ii) Operating rules.
- (A) Person and related persons.
- (B) Indirect ownership interest.
- (5) The income test.
- (6) Application of the ownership, control, and income tests.

**§ 1.382-1****26 CFR Ch. I (4-1-03 Edition)**

- (i) In general.
- (ii) Application of ownership test.
- (iii) Application of control test.
- (iv) Application of income test.
- (7) Safe harbors.
- (i) Contracts to acquire stock.
- (ii) Escrow, pledge, or other security agreements.
- (iii) Compensatory options.
- (iv) Options exercisable only upon death, disability, mental incompetency or retirement.
- (v) Rights of first refusal.
- (vi) Options designated in the Internal Revenue Bulletin.
- (8) Additional rules.
- (i) Contracts to acquire stock.
- (ii) Indirect transfer of an option.
- (iii) Options related to interests in non-corporate entities.
- (iv) Puts.
- (9) Definition of option.
- (i) In general.
- (ii) Convertible stock.
- (iii) Series of options.
- (iv) General principles of tax law.
- (10) Subsequent treatment of options treated as exercised on a change date.
- (i) In general.
- (ii) Alternative look-back rule for options exercised within 3 years after change date.
- (11) Transfers not subject to deemed exercise.
- (12) Certain rules regarding non-stock interests as stock.
- (e) Stock transferred under certain agreements. [Reserved]
- (f) Family attribution. [Reserved]
- (g) Definitions.
- (h) Effective date.
- (1) In general. [Reserved]
- (2) Option attribution rules.
- (i) General rule.
- (ii) Special rule for control test.
- (iii) Convertible stock issued prior to July 20, 1988.
- (A) In general.
- (B) Exceptions.
- (1) Nonvoting convertible preferred stock.
- (2) Other convertible stock.
- (iv) Convertible stock issued on or after July 20, 1988, and before November 5, 1992.
- (v) Certain options in existence immediately before and after an ownership change.
- (vi) Election to apply § 1.382-2T(h)(4).
- (A) In general.
- (B) Additional consequences of election.
- (C) Time and manner of making the election.
- (D) Amended returns.
- (3) Special rule for options subject to attribution under § 1.382-2T(h)(4).

*§ 1.382-5 Section 382 limitation.*

- (a) Scope.
- (b) Computation of value.

- (c) Short taxable year.
- (d) Successive ownership changes and absorption of a section 382 limitation.

- (1) In general.
- (2) Recognized built-in gains and losses.
- (3) Effective date.
- (e) Controlled groups.
- (f) Effective date.

*§ 1.382-6 Allocation of income and loss to periods before and after the change date for purposes of section 382.*

- (a) General rule.
- (b) Closing-of-the-books election.
- (1) In general.
- (2) Making the closing-of-the-books election.
- (i) Time and manner.
- (ii) Election irrevocable.
- (3) Special rules relating to consolidated and controlled groups.
- (i) Consolidated groups.
- (ii) Controlled groups.
- (c) Operating rules for determining net operating loss, taxable income, net capital loss, modified capital gain net income, and special allocations.
- (1) In general.
- (2) Adjustment to net operating loss.
- (i) Determination of remaining capital gain.
- (ii) Reduction of net operating loss by remaining capital gain.
- (d) Coordination with rules relating to the allocation of income under § 1.1502-76(b).
- (e) Allocation of certain credits.
- (f) Examples.
- (g) Definitions and nomenclature.
- (1) Change year.
- (2) Pre-change period.
- (3) Post-change period.
- (4) Modified capital gain net income.
- (h) Effective date.

*§ 1.382-7 Built-in gains and losses. [Reserved]**§ 1.382-8 Controlled groups.*

- (a) Introduction.
- (b) Controlled group loss and controlled group with respect to a controlled group loss.
- (1) In general.
- (2) Presumption regarding net unrealized built-in loss.
- (c) Computation of value.
- (1) Reduction in value by the amount restored.
- (2) Restoration of value.
- (3) Reduction in value by the amount restored.
- (4) Appropriate adjustments.
- (5) Certain reductions in the value of members of a controlled group.
- (d) No double reduction.
- (e) Definitions and nomenclature.
- (1) Definitions in Section 382 and the regulations thereunder.

- (2) Controlled group.
- (3) Component member.
- (4) Predecessor and successor corporation.
- (f) Coordination between consolidated groups and controlled groups.
- (g) Examples.
- (h) Time and manner of filing election to restore.
  - (1) Statement required.
  - (2) Revocation of election.
  - (3) Filing by component member.
  - (i) [Reserved]
  - (j) Effective date.
    - (1) In general.
    - (2) Transition rule.
  - (i) In general.
  - (ii) Special transition rules for controlled groups that had ownership changes before January 29, 1991.
  - (3) Amended returns.

*§ 1.382-9 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.*

- (a) Introduction.
- (b) Application of section 382(1)(5).
- (c) [Reserved]
- (d) Rules for determining whether stock of the loss corporation is owned as a result of being a qualified creditor.
  - (1) Qualified creditor.
  - (2) General rules for determining whether indebtedness is qualified indebtedness.
    - (i) Definition.
    - (ii) Determination of beneficial ownership.
    - (iii) Duty of inquiry.
    - (iv) Ordinary course indebtedness.
  - (3) Treatment of certain indebtedness as continuously owned by the same owner.
    - (i) In general.
    - (ii) Operating rules.
    - (iii) Indebtedness owned by beneficial owner who becomes a 5-percent shareholder or 5-percent entity.
    - (iv) Example.
  - (4) Special rule if indebtedness is a large portion of creditor's assets.
    - (i) In general.
    - (ii) Applicable period.
    - (iii) Determination of ownership change.
    - (iv) Reliance on statement.
    - (5) Tacking of ownership periods.
      - (i) Transferee treated as owning indebtedness for period owned by transferor.
      - (ii) Qualified transfer.
      - (iii) Exception.
      - (iv) Debt-for-debt exchanges.
    - (6) Effective date.
      - (i) In general.
      - (ii) Elections and amended returns.
        - (A) Election to apply this paragraph (d) retroactively.
        - (B) Election to revoke section 382(1)(5)(H) election.

- (C) Amended returns.
- (e) Option attribution for purposes of determining stock ownership under section 382(1)(5)(A)(ii).
  - (1) In general.
  - (2) Special rules.
    - (i) Lapse or forfeiture of options deemed exercised.
    - (ii) Actual exercise of options not deemed exercised.
    - (iii) Amended returns.
  - (3) Examples.
  - (4) Effective dates.
    - (i) In general.
    - (ii) Special rule for interest or dividends.
  - (f) through (h) [Reserved]
  - (i) Election not to apply section 382(1)(5).
  - (j) Value of the loss corporation in an ownership change to which section 382(1)(6) applies.
  - (k) Rules for determining the value of the stock of the loss corporation.
    - (1) Certain ownership interests treated as stock.
      - (2) Coordination with section 382(e)(2).
      - (3) Coordination with section 382(e)(3).
      - (4) Coordination with section 382(1)(1).
      - (5) Coordination with section 382(1)(4).
      - (6) Special rule for stock not subject to the risk of corporate business operations.
        - (i) In general.
        - (ii) Coordination of special rule and other rules affecting value.
      - (7) Limitation on value of stock.
        - (1) Rules for determining the value of the loss corporation's pre-change assets.
          - (i) In general.
          - (2) Coordination with section 382(e)(2).
          - (3) Coordination with section 382(e)(3).
          - (4) Coordination with section 382(1)(1).
          - (5) Coordination with section 382(1)(4).
        - (m) Continuity of business requirement.
          - (1) Under section 382(1)(5).
          - (2) Under section 382(1)(6).
      - (n) Ownership change in a title 11 or similar case succeeded by another ownership change within two years.
        - (1) Section 382(1)(5) applies to the first ownership change.
        - (2) Section 382(1)(6) applies to the first ownership change.
      - (o) Options not subject to attribution.
      - (p) Effective date for rules relating to section 382(1)(6).
        - (1) In general.
        - (2) Ownership change to which section 382(1)(6) applies occurring before March 17, 1994.

## § 1.382-1T

## 26 CFR Ch. I (4-1-03 Edition)

§ 1.382-10 [Reserved]

§ 1.382-11 *Effective dates.* [Reserved]

[T.D. 8149, 52 FR 29674, Aug. 11, 1987, as amended by T.D. 8264, 54 FR 38666, Sept. 20, 1989; T.D. 8352, 56 FR 29434, June 27, 1991. Redesignated by T.D. 8440, 57 FR 45711, Oct. 5, 1992; T.D. 8490, 58 FR 51573, Oct. 4, 1993; T.D. 8531, 59 FR 12835, Mar. 18, 1994; T.D. 8530, 59 FR 12842, Mar. 18, 1994; T.D. 8529, 59 FR 12846, Mar. 18, 1994; T.D. 8546, 59 FR 32080, June 22, 1994; T.D. 8679, 61 FR 33314, June 27, 1996; T.D. 8825, 64 FR 36177, July 2, 1999]

### § 1.382-1T [Reserved]

### § 1.382-2 General rules for ownership change.

(a) *Certain definitions for purposes of sections 382 and 383 and the regulations thereunder.* The following definitions apply for purposes of sections 382 and 383 and the regulations thereunder.

(1) *Loss corporation*—(i) *In general.* The term *loss corporation* means a corporation which—

(A) Is entitled to use a net operating loss carryforward, a capital loss carryover, a carryover of excess foreign taxes under section 904(c), a carryforward of a general business credit under section 39, or a carryover of a minimum tax credit under section 53,

(B) For the taxable year that includes a testing date, as defined in paragraph (a)(4) of this section or § 1.382-2T(a)(2)(i), whichever is applicable (determined for purposes of this paragraph (a)(1) without regard to whether the corporation is a loss corporation), has a net operating loss, a net capital loss, excess foreign taxes under section 904(c), unused general business credits under section 38, or an unused minimum tax credit under section 53, or

(C) Has a net unrealized built-in loss (determined for purposes of this paragraph (a)(1) by treating the date on which such determination is made as the change date). See section 382(h)(3) for the definition of net unrealized built-in loss.

See section 383 and § 1.383-1 for rules relating to a loss corporation that has an ownership change and has capital losses, excess foreign taxes, general business credits or minimum tax credits. Any predecessor or successor to a

loss corporation described in this paragraph (a)(1) is also a loss corporation.

(ii) *Distributor or transferor loss corporation in a transaction under section 381.* Notwithstanding that a loss corporation ceases to exist under state law, if its net operating loss carryforwards, excess foreign taxes, or other items described in section 381(c) are succeeded to and taken into account by an acquiring corporation in a transaction described in section 381(a), such loss corporation shall be treated as continuing in existence until—

(A) Any pre-change losses (excluding pre-change credits described in § 1.383-1(c)(3)), determined as if the date of such transaction were the change date, are fully utilized or expire under either section 172 or section 1212,

(B) Any net unrealized built-in losses, determined as if the date of such transaction were the change date, may no longer be treated as pre-change losses, and

(C) Any pre-change credits (described in § 1.383-1(c)(3)), determined as if the date of such transaction were the change date, are fully utilized or expire under sections 39, 53, or 904(c).

Following a transaction described in the preceding sentence, the stock of the acquiring corporation shall be treated as the stock of the loss corporation for purposes of determining whether an ownership change occurs with respect to the pre-change losses and net unrealized built-in losses that may be treated as pre-change losses of the distributor or transferor corporation.

(iii) *Separate accounting required for losses and credits of an acquiring corporation and a distributor or transferor loss corporation.* Except as provided in paragraph (a)(1)(iv) of this section, pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss), that are succeeded to and taken into account by an acquiring corporation in a transaction to which section 381(a) applies must be accounted for separately from losses and credits of the acquiring corporation for purposes of applying this section. See *Example (2)* of § 1.382-2T(e)(2)(iv) of this section.